

FEDERAL COMMUNICATIONS COMMISSION
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October 18, 1994

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Gerald D. Kleczka
Member of Congress
2301 Rayburn House Office Building
U.S. House of Representatives
Washington, D.C. 20515

DOCKET FILE COPY ORIGINAL

Dear Congressman Kleczka:

This letter responds to your correspondence and enclosure of a Wall Street Journal article regarding billing of information services provided on 800 numbers.

The Telephone Disclosure and Dispute Resolution Act (TDDRA) was enacted by Congress in 1992 and required both the Federal Communications Commission and the Federal Trade Commission (FTC) to adopt rules governing the provision of pay-per-call services. Under the TDDRA, the FCC has jurisdiction over the telecommunications carriers involved in the transmission and billing of the telephone calls, while the Federal Trade Commission has jurisdiction over the information service companies themselves.

The TDDRA generally required pay-per-call services to be provided on 900 telephone numbers and generally prohibited the provision of these services on 800 numbers, except in instances where the caller has entered into a presubscription agreement or comparable arrangement with the information service provider. Pursuant to the Commission's rules, which became effective on September 24, 1993, a presubscription agreement entails a formal contractual understanding whereby the consumer is provided clearly and conspicuously all terms and conditions associated with the use of the service and affirmatively agrees to abide by them.

The Commission has received numerous complaints similar to those described by your constituent. These complaints are processed by the Enforcement Division of the Common Carrier Bureau by serving a copy of the complaint upon the telecommunication carriers involved, who must generally respond in writing within 30 days. Beyond reviewing these

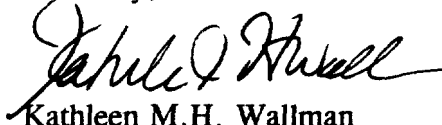
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complaints and pursuing appropriate action to resolve them, the Commission has undertaken several efforts. First, Common Carrier Bureau staff has met with the carriers that provide the billing service for calls to 800 numbers as well as interexchange carriers who provide the 800 number transport to emphasize their obligations under the TDDRA and the rules of the Commission. Secondly, because the increase in the number of complaints has been so significant, we have started an investigation of these practices, with special focus on whether any companies have attempted to evade or violate our rules. Additionally, as part of the effort to make clear the carriers' responsibilities under the law, the Common Carrier Bureau has recently issued a ruling holding that the information provider's receipt of the originating telephone number, a practice that was serving as the premise of some charges, does not in itself constitute a presubscription agreement.

Moreover, on August 2, 1994, the Commission instituted a Notice of Proposed Rulemaking seeking to strengthen Commission rules to prevent abusive and unlawful practices under the TDDRA. Specifically, the Commission has sought public comment on a proposal to require that a presubscription agreement be established only with a legally competent individual and executed in writing, and that common carriers obtain evidence of the written agreement before issuing a telephone bill that contains charges for presubscribed information services. Under the proposed rules, these telephone bills could be addressed only to the individual who actually entered into the presubscription arrangement, not to the person or company whose telephone was used to place the call. The Commission has tentatively concluded that this and other proposed changes would significantly assist in eliminating the source of many consumer complaints. Enclosed is a summary of the Commission's action in this regard.

We appreciate receiving your correspondence. Please call upon us if we can provide any additional information.

Sincerely,



Kathleen M.H. Wallman
Chief
Common Carrier Bureau

Enclosure

GERALD D. KLECZKA
4TH DISTRICT WISCONSIN

COMMITTEES
WAYS AND MEANS
HOUSE ADMINISTRATION
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AND POLICY



Congress of the United States
House of Representatives

July 25, 1994

2301 RAYBURN BUILDING
WASHINGTON, DC 20515-4904
(202) 225-4572

5032 WEST FOREST HOME AVENUE
MILWAUKEE, WI 53219-4589
(414) 297-1140

414 WEST MORELAND BOULEVARD
SUITE 105
WAUKESHA, WI 53188-2441
(414) 549-6360

CCB 800
CC-900
3718
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The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, D.C. 20054

Dear Chairman Hundt:

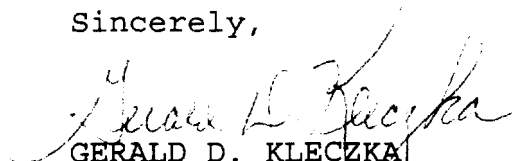
I am writing you today about services provided by companies over toll-free lines. While it is my understanding that access to "900 lines" is easily controlled by telephone customers who do not wish to use these services, "800 numbers" are reportedly another matter.

As you can see from the attached article from the *Wall Street Journal*, this is an issue which is attracting national attention. I have heard from constituents who are concerned that companies are using 800 numbers to circumvent any oversight and regulations. My constituents are particularly concerned, and rightfully so, that their ability to oversee what services their children access is compromised by companies using toll-free lines instead of 900 ones.

As can clearly be seen from the article, this is a complex issue and there are many ways for companies to get around regulations and procedures designed to protect telephone customers. I would like to know if the FCC has done any investigating into this matter, and, if so, what determinations have been made. Additionally, I am interested in any plans or proposals the Commission has for increasing consumer ability to block undesired access to 800 numbers.

Thank you for your attention to this matter.

Sincerely,


GERALD D. KLECZKA
Member of Congress

GDK/dr
Enclosure

Porn Lines Offer 800 Numbers, But These Aren't Toll-Free Kind

By JONATHAN DAHL

Staff Reporter of THE WALL STREET JOURNAL

A few times a week this past school year, Valerie Turner picked up the phone and dialed numbers like 1-800-BIG-ORGY and 1-800-HOTT-SEX. She listened intently to soft, throaty greetings like "Hi, Sexy, want to talk about something really kinky?"

Actually, Ms. Turner, director of telephone systems for Northern Michigan University, wanted to talk about something else: the school's phone bills. That's because porn-line purveyors, in a bid to evade efforts by businesses, parents and legislators to hang up on phone-sex operators using costly 900 numbers, have begun charging for calls to normally toll-free 800 lines.

At Northern Michigan, which blocks 900-number calls, the tactic has worked. Students have rung up thousands of dollars in charges on campus phones calling the 800 porn lines, many of which charge as much as \$5 a minute. Thus Ms. Turner's morning calls: She's trying to identify the new porn lines to block them.

Once just a nuisance, dial-a-porn has become a menace to phone owners all over the country. Not content with 900 numbers, which are easy to block electronically, sex lines have migrated to 800 service, overseas exchanges and even telephone calling cards. These new angles are often legally questionable, but so far the best telecommunications minds — not to mention a host of regulators and legislators — haven't been able to stop them.

Practically anyone who owns a phone has reason to worry. Thousands of businesses, hotels and hospitals are suddenly getting huge bills for porn calls — often with no way of tracking the caller. Parents are discovering that their children can once more call porn lines. And homeowners and businesses are being forced to sift through confusing bills to dispute calls with local phone companies.

At the Motel 6 chain, a small staff has been assigned to review hundreds of phone bills because its guests have run up \$250,000 in porn charges this year. In Kansas City, homeowner Ken Paton asks, "Do I have to put locks on my phone?" His 13-year-old son recently ran up \$195 in phone bills calling 1-800-HOT-TALK after Mr. Paton blocked 900 calls.

"There's really no phone that's safe anymore," says John Haugh, chairman of Telecommunications Advisors Inc., a consulting concern in Portland, Ore. "It doesn't matter if you've got one or 10,000 phone lines. You're vulnerable to some mighty expensive porn charges."

Analysts estimate that 800 porn numbers will cost businesses more than \$100 million this year. Even worse, charging on 800 lines could shake the public's confidence in an indispensable tool: 800 service. More than 80 million calls a day — or 40% of all long-distance calls — are placed on 800

exchanges. Until now, people could safely assume the calls were toll free.

But porn operators — along with a few psychic and sports lines — have discovered loopholes that allow charging on 800 lines as long as they enter into a "contractual agreement" with callers. One ploy to try to satisfy that requirement is to invite callers to punch in any four-number code. The porn company then typically charges the call to the number of the phone from which the call was made, regardless of who owns it. What's more, callers can subsequently use the code — porn purveyors call it a "free calling-card number" — to charge porn calls to the original phone even when they're calling from a different phone. And that can make it extremely difficult for the owner of the phone to figure out who is responsible for the charges.

As an industry, porn phone has ballooned in recent years by advertising on late-night public and cable television. The ads usually list rates and specify "adults only." Fewer than a dozen shadowy companies control the industry, analysts say. Most list their addresses as post office boxes and refuse to respond to inquiries. As an added layer of concealment, they use billing agencies to process charges through local telephone companies. That way, porn charges show up buried under the name of an official-sounding agency.

But increasingly, porn charges are hard not only to miss but also to control. In Mounds View, Minn., Hyman Freightways Inc. has more than 300 phones in 97 locations. Many of the phones are at loading docks so that truckers can call dispatchers and make credit-card calls home. The company blocks access to long distance, but "there's no way in the world we can block all 800 calls," says William Otto, telecommunications director. Three months ago, the company got its first charge for 800 porn calls, for \$67. Last month, the charges zoomed to \$4,000.

In addition to 800 numbers, many porn lines give customers the option of dialing an international phone number. Most of the new lines are to small countries like the Republic of Sao Tome, an island off the coast of Africa. "Some of these countries have about 2,000 phones, and half of them are being answered for international porn calls," says an AT&T Corp. spokesman.

The lines use overseas numbers because many corporations don't block international calls, and the countries they use let them charge what they want. From Suriname in northeast South America, the Lesbian Lust Line informs callers: "Hold on for the best X-rated conversation you'll ever hear. It's only \$50 a minute."

Needless to say, all of this has prompted a barrage of consumer complaints to phone companies, state regulators and the federal government. So far, the Federal Communications Commission and several state attorneys general say

Please Turn to Page B6, Column 5

Porn Lines Are Using 800 Numbers but They Aren't Toll-Free Kind

Continued From Page B1

they are investigating the porn industry's method of charging for 800 calls. The tactic probably violates FCC rules, says Robert Spangler, the agency's deputy chief of enforcement, but he adds that policing porn lines is difficult.

Under federal law, homeowners and businesses can dispute the charges with their local phone companies without risk of having service shut off. Sometimes, analysts say, the phone companies forgive the charges. A few, including Nynex, have even refused to bill for 800 charges. But most phone companies say they're caught in the middle and demand payment.

So far now, the battle is being fought on many fronts: In Kansas City, Mr. Paton "grounded" his son for a month and fired off a letter to President Clinton. Hyman Freightways issued a stern letter to employees warning them to stay off porn lines. And several professional groups for hotels and universities have listed 800 porn numbers in their newsletters so that their members can block them out. But that won't solve the problem, says Kevin Adkins of the Association of College and University Telecommunications Administrators. "We just flat ran out of space to print them all."

From The Wall Street Journal,
07/13/94, p.B1